



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 15, 1992

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-238

Dear Mr. Peck:

On March 19, 1992, we received your request for an open records decision pursuant to section 7 of the Open Records Act, V.T.C.S. art. 6252-17a. Your request was assigned ID# 15353.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 7(a) to submit that request to the attorney general within ten days of the governmental body's receipt of the request for information. The time limitation found in section 7 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time prescribed by section 7(a), a heightened presumption of openness arises which can only be overcome by a compelling demonstration that the information should not be made public. *Id.*

However, we realize that the short time frame prescribed by section 7(a) may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On March 23, 1992, we asked you for a brief explaining why the exceptions you claimed under section 3(a) of the Open Records Act apply to the requested information and copies of the requested information. To date we

have received neither copies of the requested information nor a brief explaining the applicability of the section 3(a) exceptions you claimed.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Without the information we requested of you, your request for an open records decision remains incomplete. Consequently, this office cannot consider your request for an open records decision, and we are closing the file. Should you at some future date request that this matter be reopened and considered, we will not consider your request timely, and will consider all discretionary exceptions to required public disclosure waived unless you can demonstrate compelling reasons why the information should not be released. *Hancock*, 797 S.W.2d at 381. In the absence of such a compelling demonstration, we find that you have not met your burden under the heightened presumption of openness and must release the requested information. Accordingly, we are closing the file without a finding.

We note that some of the requested information may be made confidential by law. While we cannot direct you to disclose information that is confidential under the law, neither can we provide you with an opinion upon which you can rely as an affirmative defense to prosecution under section 10(c)(1) of the Open Records Act. If you have questions regarding this matter, please refer to OR92-238.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GK/lmm

Ref.: ID# 15353

cc: Mr. Andrew Turner
TDCJ # 536120
Ramsay II Unit
Route 4, Box 1200
Rosharon, Texas 77583